



## PCT

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

|   |   |   |
|---|---|---|
| Applicant's or agent's file reference<br>P800329/WO/1                                     | <b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) |   |
| International application No.<br>PCT/EP2003/004104  | International filing date (day/month/year)<br>19 April 2003 (19.04.2003)  | Priority date (day/month/year)<br>15 June 2002 (15.06.2002) |
| International Patent Classification (IPC) or national classification and IPC<br>H01M 8/24 |   |   |
| Applicant<br>DAIMLERCHRYSLER AG   |   |   |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 1 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

|   |   |
|---|---|
| Date of submission of the demand<br>09 December 2003 (09.12.2003) | Date of completion of this report<br>09 September 2004 (09.09.2004) |
| Name and mailing address of the IPEA/EP                           | Authorized officer  |
| Facsimile No.   | Telephone No.   |

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/004104

## I. Basis of the report

### 1. With regard to the elements of the international application:\*

☐ the international application as originally filed

☒ the description:

pages 1-6, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

☒ the claims:

pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, as amended (together with any statement under Article 19  
pages \_\_\_\_\_, filed with the demand  
pages 1, filed with the letter of 29 April 2004 (29.04.2004)

☒ the drawings:

pages 1/1, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

☐ the sequence listing part of the description:

pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

### 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item. These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).

☐ the language of publication of the international application (under Rule 48.3(b)).

☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

### 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

☐ contained in the international application in written form.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority in written form.

☐ furnished subsequently to this Authority in computer readable form.

☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

### 4. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages \_\_\_\_\_

☒ the claims, Nos. 2-4

☐ the drawings, sheets/fig \_\_\_\_\_

### 5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. Statement

|                               |        |   |     |
|-------------------------------|--------|---|-----|
| Novelty (N)                   | Claims | 1 | YES |
|                               | Claims |   | NO  |
| Inventive step (IS)           | Claims |   | YES |
|                               | Claims | 1 | NO  |
| Industrial applicability (IA) | Claims | 1 | YES |
|                               | Claims |   | NO  |

### 2. Citations and explanations

Document D1 (US-A-5 858 569), which is considered to be the closest prior art, discloses (cf. column 7, lines 23 to 43; figures 2A to 2C, 4, 4A to 4D) an arrangement for generating electrical energy which comprises at least one fuel cell containing a membrane unit arranged in a horizontal position.

The subject matter of claim 1 **differs from D1** in that the fuel cell is arranged in a road vehicle for the transportation of goods and/or people.

The subject matter of claim 1 is therefore formally novel (PCT Article 33(2)).

However, the arrangement of a fuel cell in a road vehicle is the universally preferred and known use of a fuel cell, and therefore this distinguishing feature cannot be used to substantiate the inventive step of the claimed subject matter.

Consequently, the subject matter of claim 1 does **not involve an inventive step** (PCT Article 33(3)).

The arguments advanced by the applicant whereby more uniform conditions for the separation of the reaction gases, the transportation of charge carriers and the

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discharge of the reaction products could be achieved by arranging the membrane unit horizontally justify a use claim, at least in the European phase of this application.